IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 6623 of 1988

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MAHIPATRAI CHHAGANLAL MEHTA
VERSUS
DHORAJI MUNICIPALITY & ORS.

Appearance:
None present for the Petitioner
None present for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 10/07/2000

C.A.V. JUDGMENT

1. The petitioner retired from the services of the respondent No.1 on 31st March, 1986. In this petition,

he prayed for direction to the respondent No.1 to make payment of the entire amount which became due and payable to the petitioner within time that may be specified by this court together with interest at the rate of 12% p.a. on and from 1st April, 1986. Further prayer has been made to direct the respondents No.2 and 3 to take appropriate penal and other actions against the respondent No.1-Municipality as per the provisions of the Gujarat Municipalities Act. Third prayer has been made for issuance of an interim mandatory injunction directing the respondent No.1- Municipality to make payment of about Rs.57000/= together with interest at the rate of 12% within 15 days.

2. This special civil application came up for preliminary hearing in court on 21st October, 1988, on which date, the matter was admitted and interim relief has also been granted by this court, which reads as under:

> By way of interim relief it is directed that the respondent No.3 shall see that the amount of P.F. dues of the petitioner i.e. Rs.31,996=14ps. is withdrawn from respondent No.1 Municipality and the said amount is deposited with the Registrar of this High Court latest before November 21, 1986. Respondent No.3 is further directed to see that the amount is deposited with the Registrar by way of demand draft drawn in favour of the Registrar, Gujarat High Court. As and when the aforesaid amount is deposited in this Court, the Registrar shall permit the petitioner to withdraw the same. It will not be necessary for the Registrar to take further orders from this court. With regard to the remaining amounts, claimed in the petition, further orders will be passed on 21-11-88.

3. Reply to the special civil application is filed by the respondent No.1, copy of which has been given to the counsel for the petitioner on 3rd March, 2000. The petitioner has not filed any rejoinder to this reply.

4. In the special civil application, the petitioner has given out that for recovery of his claim of retirement benefits, he approached to the Civil Court (S.D.), Dhoraji by filing a suit. In the suit, a compromise has been arrived at between the parties on 20th December, 1987. As per this compromise, the respondent No.1, has agreed to pay the amount of provident fund to the petitioner on 31st March, 1988 and

other retirementary benefits before 31st December, 1988 together with interest at the rate of 12%. It is the grievance of the petitioner that this compromise which has been arrived at by the respondent No.1 with the petitioner has not been complied with and he has approached to this court by this petition.

5. In reply to the special civil application, it is stated, which is not controverted by the petitioner, that vide voucher No.694 dated 22-11-1988 an amount of Rs.31,996-14 has been paid towards the provident fund dues to the petitioner. Vide vouchers No.1388 dated 30-8-1989 and No.116 dated 12-4-1990 Rs.31,328/= has been paid to the petitioner towards the amount of gratuity and vide voucher No.39 dated 11-4-1989 under the head of Earned Leave an amount of Rs.4972-32 has been paid to the petitioner. So far as the claim of the petitioner for payment of L.T.C. in cash is concerned, the respondent has come up with the case that the petitioner has not filled in the option form and so amount is not paid to him for this reason. The petitioner has not controverted the figures of the amount of provident fund, gratuity, encashment of leave, which is paid to him by the Municipality as retirementary benefits and the same are to be taken to be correct. As all the amounts which were payable to the petitioner as retirementary benefits have been paid by the respondent No.1, nothing now survives in this petition to the extent it relates to giving direction to the respondent No.1 for payment of these amounts.

5. Now two claims of the petitioners need to be considered. Firstly, the claim for payment of L.T.C. in cash. This amount has not been paid by the respondent No.1 as the petitioner has not filled the option form. The petitioner retired long back and now it is only a matter of formality for official purpose and not of substance. It is not the case of the respondent that the petitioner has availed of the L.T.C.. It is true that the petitioner has to fill in the option form and at one point of time it has also been thought of to ask him to fill in this form but now has retired so this requirement is dispensed with and the respondent No.1 is directed to pay the amount of L.T.C. to the petitioner for the block years for which he was entitled and has not availed of the same. This amount has to be calculated and paid to the petitioner within a period of one month from the date of receipt of writ of this order. As the petitioner himself is responsible for nonpayment of this amount, his claim for interest thereon deserves no acceptance.

7. So far as the claim of the petitioner for interest on the delayed payment of the amount of provident fund, gratuity and encashment of leave is concerned, I find sufficient merits in his this claim. The petitioner has filed the suit in the Civil Court where the respondent No.1 arrived at a compromise with him and under that compromise it has agreed to pay interest also at the rate of 12%p.a. to the petitioner. As per this agreement, which has been arrived at in between the parties in the Lok Adalat otherwise also, the petitioner is entitled for interest on delayed payment of this amount of retirementary benefits. Not only this, in case the delay in making payment of retiral benefits is made without there being any justification whatsoever, the employee is entitled for interest. It is in fact an interest to compensate for the loss of interest on the retirement benefits which otherwise in case the same would have been paid in time, the employee would have earned. In reply to the special civil application, the respondents have not furnished any explanation good, bad or indifferent for this delay in fact an inordinate delay in payment of the amount of retirement benefits to the petitioner. The respondent No.1 is directed to pay interest on the amount which is paid to the petitioner at the rate of 12% p.a. from the date of his retirement to the date of payment thereof. This amount has to be calculated and paid to the petitioner within a period of one month from the date of receipt of writ of this order.

8. So far as the claim of the petitioner regarding bonus is concerned, it is suffice to say that that has not been paid as Collector, Rajkot has stayed payment thereof. This affidavit is of the year 1992 and thereafter neither the respondent No.1 nor the petitioner has clarified what has been ultimately decided by the Collector, Rajkot. In case, ultimately, it is decided that the employee are entitled for bonus including the petitioner then this amount of bonus has to be paid by the respondent No.2 to the petitioner within a period of one month from the date of receipt of writ of this order and the interest has also to be paid thereon at the rate of 12% p.a. from the date on which the entitlement for the amount of bonus has been decided by the Collector till the date of payment. It is a fit case where the petitioner has to be awarded costs of the petition also.

9. As a result of the aforesaid discussion, the writ petition is allowed to the extend as indicated in

the body of the judgment. Rule is also made absolute to the aforesaid extent. The respondent No.1 is directed to pay Rs.1000/= as costs of this petition to the petitioner. This amount of costs has to be paid to the petitioner along with other payments to be made to him within one month from the date of receipt of writ of this order.

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